434.

SUPREME COURT OF THE UNITED STATES.

No. 141.

E. P. CALKIN & CO., PLAINTIFFS IN ERROR,

vs.

JAMES H. COCKE.

IN ERROR TO THE SUPREME COURT OF ERRORS AND APPEALS FOR THE STATE OF TEXAS.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation and service	4	2
Bond to prosecute writ of error	6	2
Copy of writ of error	9	4
Copy of bond	11	5
Proceedings in district court	13	6
Petition for injunction	13	6
Exhibits referred to in petition	16	8
Order of court	22	11
Bond to prosecute writ of injunction	22	12
Writ of injunction	23	13
Coroner's return	24	13
Answer to petition	24	14
Plea of respondent	27	16
Intervention of U. S. district attorney	27	16
Judgment of district court	28	16
Bill of exceptions	29	17
Petition for writ of error	33	20
Writ of error and return	34	20
Bond to prosecute writ	35	21
Clerk's certificate	36	22
Opinion of Supreme Court	37	22
Judgment of " "	54	32

GIDEON & Co., Print.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges [L. S.] of the supreme court of errors and appeals for the State of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of errors and appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had, in the said suit between James H. Cocke and E. P. Calkin and Samuel Jones, merchants, trading under the firm and style of E. P. Calkin & Co., wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said E. P. Calkin & Co., as by their complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and forty-nine.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by

LEVI WOODBURY,
Associate justice of Supreme Court of United States.

E. P. CALKIN & Co., plaintiffs in error,
vs.
JAMES H. COCKE, defendant in error.

Copy of a writ of error, lodged in pursuance of the statute of the United States, in such cases made and provided, in the office of the clerk of the supreme court of errors and appeals for the State of Texas, for the above named James H. Cocke, defendant in error.

SAM'L YERGER,
Attorney for plaintiff in error.

July, 1850.

Original filed in my office 25th day of August, 1850.
Test: THOS. GREEN,
Clerk supreme court of Texas,
By N. C. RAYMOND, *Deputy.*

Citation.

The United States of America, to James H. Cocke, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of errors and appeals for the State of Texas, wherein E. P. Calkin and Samuel Jones, merchants, trading under the firm and style of E. P. Calkin & Co., are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Levi Woodbury, associate justice of the Supreme Court of the United States, this eleventh day of March, in the year of our Lord one thousand eight hundred and fifty.

LEVI WOODBURY,
Associate justice of Supreme Court of United States.

On this the fourth day of November, in the year of our Lord one thousand eight hundred and fifty, personally appeared Joseph Frances, before me, the subscriber, John A. Haynie, an acting justice of the peace, in the county of Washington, and makes oath that he delivered a true copy of the within citation to James H. Cocke.

JOHN A. HAYNIE.

Filed in my office 25th day of August, 1850.
Test: THOS. GREEN,
Clerk supreme court of Texas,
By N. C. RAYMOND, *Deputy.*

E. P. CALKIN & Co.
vs.
JAMES H. COCKE.
In error.

Know all men by these presents, that we, E. P. Calkin & Co. and Israel G. Hasbrook, are held and firmly bound unto the above named

James H. Cocke in the sum of two hundred dollars, to be paid to the said James H. Cocke, his executors, and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 14th day of September, A. D. 1848.

Whereas the above named E. P. Calkin & Co., have prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above entitled suit by the supreme court of errors and appeals for the State of Texas; now, therefore, the condition of this obligation is such, that if the above named E. P. Calkin & Co. shall prosecute their writ of error to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall remain and be in full force and virtue.

E. P. CALKIN & CO.,
In liquidation.
I. G. HASBROOK. [SEAL.]

Sealed and delivered in presence of—
SAM'L YERGER.

STATE OF TEXAS, *Galveston county.*

I, Jacob G. Remick, a notary public in and for the county and city of Galveston, in the State of Texas, do hereby certify, that I am acquainted with Israel G. Hasbrook, whose name is subscribed to the foregoing bond; and from that knowledge, and from the opinion of others, I believe him to be worth more than the amount of two hundred dollars, the sum therein mentioned, after all his just debts are paid.

In testimony of which I have hereunto set my hand, and affixed the notarial seal of office, at my office in the city of Galveston, [SEAL.] this 18th day of Sept'r, A. D. 1848, and in the seventy-second year of American independence.

J. G. REMICK, *Notary public.*

I am acquainted with Mr. I. G. Hasbrook, the security in the foregoing bond, and also with his standing amongst his fellow citizens, and I have no hesitation in certifying that I believe him to [be] good and sufficient security for the sum of two hundred dollars, and much more if it were needful.

18th Sept., 1848. SAM'L YERGER.

I approve the within and foregoing bond. February 20, 1850.
LEVI WOODBURY,
Associate justice of Supreme Court.

Filed in my office the 25th day of August, 1850.
Test: THOS. GREEN, *Clerk sup. ct., Texas.*
By N. C. RAYMOND, *Dep.*

THE STATE OF TEXAS,
County of Travis.

Supreme court, clerk's office.

Be it remembered, that on the twenty-fifth day of August, in the year of our Lord one thousand eight hundred and fifty, there was filed in this office a certain writ of error, in words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the [SEAL.] supreme court of errors and appeals for the State of Texas, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of errors and appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit, between James H. Cocke and E. P. Calkin and Samuel Jones, merchants, trading under the firm and style of E. P. Calkin & Co., wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of, or commission held under, the United States, and the decision was against the title, right, and privilege, or exemption specially set up, or (determined) claimed under such a clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said E. P. Calkin & Co., as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and forty-nine.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by LEVI WOODBURY,
Associate Justice of Sup. Ct. of United States.

And at the time of filing said writ the following bond was also filed, to wit:

E. P. CALKIN & Co.
vs.
JAMES H. COCKE. } In error.

Know all men by these presents, that we, E. P. Calkin & Co. and Israel P. G. Hasbrook, are held and firmly bound unto the above named James H. Cocke in the sum of two hundred dollars, to be paid to the said James H. Cocke, his executors and administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this 14th day of September, A. D. 1849.

Whereas the above named E. P. Calkin & Co. have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the supreme court of errors and appeals for the State of Texas; now, therefore, the condition of this obligation is such, that if the above named E. P. Calkin & Co. shall prosecute their writ of error to effect, and answer all costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall remain and be in full force and virtue.

E. P. CALKIN & Co.,
In liquidation.
I. G. HASBROOK. [SEAL.]

Sealed and delivered in presence of—
SAM'L YERGER.

STATE OF TEXAS,
Galveston county.

I, Jacob G. Renick, a notary public in and for the county and city of Galveston, in the State of Texas, do hereby certify, that I [am] acquainted with Israel G. Hasbrook, whose name is subscribed to the foregoing bond, and from that knowledge, and from the opinion of others, I believe him to be worth more than the amount of two hundred dollars, the sum therein mentioned, after all his just debts are paid.

In testimony of which I have hereunto set my hand, and affixed the notarial seal of office, at my office in the city of Galveston, [SEAL.] this 18th day of September, A. D. 1848, and in the seventy-second year of American independence.

J. G. RENICK,
Notary public.

I am acquainted with Mr. I. G. Hasbrook, the security in the foregoing bond, and also with his standing amongst his fellow citizens, and

I have no hesitation in certifying that I believe him to be good and sufficient security for the sum of two hundred dollars, and much more if it were needful. 18th Sept., 1848.

SAM'L YERGER.

I approve the within and foregoing bond. Feb'y 20th, 1850.
(Signed) LEVI WOODBURY,
Ass't Jus. Sup. Ct.

Be it remembered, that, on the eleventh day of November, A. D. eighteen hundred and forty-six, there was begun and holden in the county of Galveston, at the court-house thereof, a district court for said county; present, the honorable James Love, judge; Franklin Cummings, deputy sheriff; James W. Moore, clerk; when the following cause came on to be heard, and the following proceedings were had:

E. P. CALKIN & Co.
vs.
JAMES. H. COCKE.
} Fall term, A. D. 1846.

DISTRICT COURT,
Galveston county,
First judicial district, ss:

To the honorable the judge of the district court of Galveston county: The petition of Edward P. Calkin and Samuel Jones, of the county of Galveston, merchants, trading and doing business under the name, style, and firm of E. P. Calkin and Co., respectfully represents, that heretofore, to wit, on the thirtieth day of January, in the year of our Lord one thousand eight hundred and forty-six, your petitioner brought into the city of Galveston, and State of Texas, from the city of New Orleans, in the State of Louisiana, a large amount of merchandise, the original cost of which was about four thousand five hundred dollars, principally the growth and manufacture of the United States; that James H. Cocke, claiming to act as collector of Galveston under the Republic of Texas, took the whole of said goods into possession, against the will and remonstrance of your petitioners, who denied, and still deny, that the said James H. Cocke had any legal authority in the premises; and the said James H. Cocke claimed to hold the said goods as subject to certain pretended (claims) duties under the laws of the Republic of Texas, which laws, your petitioners charge, had, before the importation of said merchandise, ceased to exist in consequence of the annexation of Texas to the United States, and the extension of the revenue laws of the United States over the State of Texas.

That after the said goods were so taken into possession by the said James H. Cocke, pretending to act as collector under the Republic of Texas, your petitioners protested, in due form of law, against such acts; a copy of which is hereto annexed, marked A, and prayed to be made a part of this petition. But wishing to get possession of their said goods,

and believing that if the said James H. Cocke had any authority over the said goods, as collector of the Republic of Texas, that petitioners were entitled to the full benefit of all the revenue laws of the Republic of Texas, and had a right, under such laws, to reship the said goods without the payment of duties afterwards; and, on the 26th day of Feb. last, applied to the said James H. Cocke for a permit to reship the said goods according to law, which the said Jas. H. Cocke refused, without the payment of about the sum of one thousand dollars, which he claimed as duties under the revenue laws of the Republic of Texas. That the said James H. Cocke, after such refusal to give your petitioners such permit, did deliver to your petitioners a part of said goods, still retaining, however, the goods mentioned in the schedule hereto annexed, marked C, and prayed to be considered a part of this petition; the original cost of which, in New Orleans, amounted to $1,505 18, and the value of which, at this place, was at least two thousand dollars. That your petitioners have subsequently applied to the said James H. Cocke for the balance of the said merchandise which he so unjustly detains, or for permission to reship the same, both of which applications the said James H. Cocke has refused, and still holds the said goods, wares, and merchandise, and refuses to deliver the same to your petitioners, except upon the payment of the said sum of one thousand dollars.

And your petitioners further show, that the said James H. Cocke has sold part of the said merchandise, to wit, 50 sacks of corn, of the value of two thousand dollars, and threatens to sell the balance, unless your petitioners will pay the said one thousand dollars.

Your petitioners further show, that, on the 10th of March last, your petitioners made another demand in writing for the said goods, a copy of which is hereto annexed, marked B; which demand the said James H. Cocke refused to comply with. And your petitioners further show, that they are merchants trading in Galveston, and it is a very serious loss to your petitioners to be deprived of their goods; that the said goods are deteriorating in value daily, some of them liable to damage, in particular one case of mouslin de laines, of the value of about four hundred and fifty dollars, is liable at this season of the year to the attacks of moths, and should the moths get in the case it might entirely destroy its value.

Your petitioners therefore pray that a writ of injunction may issue from your honorable court, enjoining the said James H. Cocke from selling the said goods. And your petitioners further pray, that the sheriff of the county may be ordered and directed by your honor to take immediate possession of the said goods, and deliver the same to your petitioners, the said goods being marked as follows: [C] 6 cases of wine, 2 quarter casks of wine, 1 bale of blankets, 10 bags Rio coffee, 1 puncheon O. whiskey, 5 boxes of tobacco, 10 boxes soap, 2 boxes starch, 5 boxes sperm. candles, 2 cases umbrellas, 1 case mouslin de laines, 2 cases shoes, 2 kegs powder, 5 half kegs powder, and 5 quarter kegs powder, all of which is to the damage of your petitioner of four thou-

sand dollars. And your petitioner prays for such other remedial process as the nature of his case requires, and as may be conformable to law, and for judgment for such damages, *all* such other and further relief in law and equity as the nature of their case may entitle them; and your petitioners will ever pray, &c.

JONAS BUTLER,
Pro petitioners.

Protest.

CITY OF GALVESTON, STATE OF TEXAS,
31*st January*, 1846.

Mr. JAMES H. COCKE:

SIR: The inquiry having been made of you yesterday, if you would allow goods to be delivered at this port of American manufacture, and on board of American vessels, and you having refused to do so, unless the duties heretofore levied and collected by the Republic of Texas were first paid, we therefore hereby notify you that we have a quantity of goods now in this port, on board of the steamship "Galveston," sailing under the American flag, and from the port of New Orleans, in the State of Louisiana, consisting of about two hundred and ten packages, of the value of four thousand four hundred and eighty-four $\frac{54}{100}$ dollars, without including the charges for freight, insurance, &c., which have been about one hundred and fifty dollars more, as will be perceived by the annexed invoice, submitted herewith for your inspection; and we now demand of you to allow the aforesaid goods to be delivered to us, resident citizens of the United States, in accordance with an act of Congress of the United States of the 31st December, 1845, and of a circular of the Secretary of [the] Treasury of the United States, of 9th January, 1846, declaring that "vessels and their cargoes arriving in any port of the State of Texas, either from a foreign port or a port in any other State or Territory of the United States, are to be placed on a similar footing with vessels and their cargoes arriving at ports in any of the States of the Union." We are compelled to pursue this course for the following, among other, reasons:

First. The goods are, many of them, of a perishable nature, and some of them are of a description suitable for sale only at this season of the year, and if we do not receive them now we should sustain heavy losses on them in consequence of their becoming unseasonable, and therefore unsaleable.

And, secondly. They were purchased in the confident belief that they would be admitted as free as at any other port of the United States, and it would be an act of injustice to compel us to pay a high duty on goods purchased in our own country to be again sold in the same; and we are confident it is not the wish or desire of the Government of the United States to tax one State for the support of another. We, therefore, again make a demand of you for a permit of delivery, and if you refuse, we hereby notify you that we shall hold you personally and in-

dividually responsible, as also in your official capacity, for all losses and damages we may sustain in the premises; we shall also hold the Government of the United States and Texas in like manner, of which they shall be duly notified in case you refuse to comply with the demand we now make on you for the delivery of our goods.

Yours, very respectfully,

Signed, E. P. CALKIN & CO.

STATE OF TEXAS,
Galveston county.

Personally came and appeared before me, R. D. Johnson, notary public in and for the county aforesaid, this 31st day of January, 1846, Samuel Jones, (one of the firm of E. P. Calkin & Co., merchants in the city of Galveston, Texas,) John H. Bennet, and Henry B. Andrews, who made oath that the said Samuel Jones delivered the original document, of which the foregoing is a true and verbatim copy, to James H. Cocke, on the day of the date thereof; and he, the said James H. Cocke at the same time still refused to delivered the goods as requested; and the appearers hereunto subscribed their names, together with me, the said notary.

Signed, SAMUEL JONES,
" JOHN H. BENNETT,
" HENRY B. ANDREWS,
" R. D. JOHNSON,
Notary Public, G. C.

Whereupon I, the said notary, at the request of the said E. P. Calkin & Co., have protested, and do by these presents most solemnly protest, against the said James H. Cocke, against the Governments of the United States and Texas, and all persons concerned for all damages and losses of every kind, which the said E. P. Calkin & Co., have sustained or may hereafter sustain in the premises. The words "and collected by the Republic of Texas" interlined between 5th and 6th lines.

R. D. JOHNSON,
Notary Public, G. C.

I hereby certify that the foregoing is a true copy from the records of my office in the city of Galveston.

Given under my hand and official seal, May 20, 1846.

[SEAL.] R. D. JOHNSON,
Notary Pub., G. C.

Letter

GALVESTON, 10*th March*, 1846.

To JAMES H. COCKE, esqr.,

SIR: On or about the 30th January, 1846, we had landed at this port from on board the steamship Galveston from New Orleans, 210

packages of merchandise, the invoice value of which was about $4,484, and about $150 expenses thereon, as per schedule handed you on 3d February, 1846. Believing that you had no right to collect duties for the Republic of Texas on these goods, we refused to enter them, or to pay duties to the said Republic of Texas, and called your attention to an act of the Congress of the United States, extending its revenue laws over "the State of Texas," and also to a circular of the Secretary of the Treasury of the United States, of 10th January, 1846, and demanded of you a permit to receive these goods free of duties to the Republic of Texas. With this demand you refused to comply, and took possession of our goods against our will and consent, and against your proceedings we protested in due form. On 26th February you delivered to us a portion of our goods, and still retained in your possession (which you refused to deliver to us) the following goods, marked:

[C] co. Galveston.

6 cases wine, value	$54 00		
2 quarter casks, do.	66 05	5 boxes sperm candles	$46 00
1 bale blankets	125 00	50 sacks corn	79 42
10 bags Rio coffee	133 00	2 cases umbrellas	73 83
1 puncheon O. whiskey	222 25	2 " mouslin de laines	454 48
5 boxes tobacco	90 09	2 " shoes	96 00
10 boxes soap	22 50	2 kegs, 5 half kegs and	
2 boxes starch	7 28	5 qr. kegs powder	35 38
	720 17		785 01
			720 17
		Amounting in cost value to about -	$1,505 18

These goods we conceive are illegally detained by you for duties to the amount of about $1000, alleged to be due by us to the Republic of Texas, on the 210 packages landed here from New Orleans, on the 30th January, 1846. As we do not acknowledge your right, either as "collector of the port of Galveston for the Republic of Texas" or as "special agent for the State of Texas," to withhold these goods from us, we now demand of you to deliver them to us free of (duty) any charge for duties which you may claim for the Republic or State of Texas, or to deliver them to us for reshipment to the port from whence they came. We claim then under the revenue laws of the United States, and by authority of a circular of the Secretary of the Treasury of the United States of 10th January, 1846; also under the debenture laws of the late Republic of Texas; and if you refuse in either or both cases, we protest against your proceedings and your refusal, and hold you and all others concerned responsible to us for all damages we may sustain in the premises. We also hereby notify you that if the goods detained by you are sold for the duties claimed by the Republic (or State) of Texas, we shall hold you and all others concerned liable to us for the illegality of your proceedings, protesting as we hereby do against

you and all (those) them, and all your proceedings and acts in relation to the above specified goods and merchandise.

Very respectfully, your ob't serv't,

E. P. CALKIN & CO.

We hereby certify, that the foregoing is a true copy from the original, delivered this day in our presence to James H. Cocke, by Samuel Jones, one of the firm of E. P. Calkin & Co., and that the said James H. Cocke refused to comply with the demand made, and said he should proceed to sell the goods.

JOHN H. BENNETT,
JAMES A. MILLER.

Galveston, 10th March, 1846.

Schedule C.

†[C] Galveston.

6 cases wine, value	$54 00
2 qr. casks wine	66 05
1 bale blankets	125 00
10 bags Rio coffee	133 00
1 puncheon O. whiskey	222 25
5 boxes tobacco	90 09
10 " soap	22 50
2 " starch	7 28
	720 17
5 boxes sperm candles	46 00
50 sacks corn	79 42
2 cases umbrellas	73 83
1 " muslin de laines	454 38
2 " shoes	96 00
2 kegs, 5 half kegs, and 5 qr. kegs powder	35 38
	785 01
	720 17
	1,505 18

Filed June 9, 1846.

Order.

1st judicial district, June 8, 1846.

To the clerk of Galveston district court: You are hereby directed, upon E. P. Calkin & Co. entering into bond, with two sufficient securities, in the penalty of two thousand dollars, to James H. Cocke, conditioned to pay all sums of money, damages, and costs, the said Cocke may sustain in consequence of the suing out of this writ, to issue an

injunction, directed to the sheriff of Galveston county, enjoining and restraining James H. Cocke from proceeding to make sale of the goods, wares, and merchandise now in his possession, as specified in the annexed schedule; and also to direct the sheriff to take possession of the same and deliver them to the plaintiffs, (E. P. Calkin & Co.,) according to the prayer of the plaintiff's petition.

Witness my hand, date above written.

JAMES LOVE,
Judge 1st judicial district.

Bond.

STATE OF TEXAS, *county of Galveston.*

Know all men by these presents, that we, Edward P. Calkin, Samuel Jones, John H. Bennett, and Phineas G. Merritt, are held and firmly bound unto John H. Cocke in the just and full sum of two thousand dollars; for which payment, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with scrawls for our seals, and dated this ninth day of June, A. D. 1846.

The condition of the above obligation is such, that whereas the above bounden Edward P. Calkin and Samuel Jones, merchants, trading and doing business under the name, style, and firm of E. P. Calkin & Co., have filed in the clerk's office of the district court, in and for said county, their petition, praying that a writ of injunction issue, enjoining and restraining the said James H. Cocke from proceeding to make sale of certain goods, wares, and merchandise, and deliver them to the said E. P. Calkin & Co.; and the said petition having been inspected, and the said writ directed to be issued by the (said) judge of the first judicial district: Now, therefore, if the said Edward P. Calkin and Samuel Jones shall pay, or cause to be paid, unto the said James H. Cocke, his heirs or assigns, all such sums of money, damages and costs, that he, the said Cocke, may sustain in consequence of the suing out of said writ and the delivery of said goods, wares, and merchandise to the said E. P. Calkin & Co., then this obligation to be null and void, otherwise to remain in full force and virtue.

EDWARD P. CALKIN, [SEAL.]
SAMUEL JONES, [SEAL.]
JOHN H. BENNETT, [SEAL.]
P. G. MERRITT. [SEAL.]

Signed, sealed, and delivered, in presence of—
HEMAN WALBRIDGE,
H. W. WAGNER.

Filed and approved June 9, 1846.

Writ.

THE STATE OF TEXAS, *county of Galveston.*

In the district court, fall term, 1846.

To the coroner of said county, greeting: Whereas Edward P. Calkin and Samuel Jones, merchants, trading and doing business under the name, style, and firm of E. P. Calkin & Co., have filed in the clerk's office of the district court in and for said county, their petition, praying that a writ of injunction issue, enjoining and restraining James H. Cocke from proceeding to make sale of the following goods, wares, and merchandise, to wit:

†[C] co. Galveston.

6 cases wine, value	$54 00	5 boxes sperm candles	$46 00
2 qr. casks do.	66 05	50 sacks corn -	79 82
1 bale blankets	125 00	2 cases umbrellas -	73 83
10 bags Rio coffee	133 00	1 " mouslin de laines	454 38
1 pun'n O. whiskey	222 25	2 " shoes - -	96 00
5 boxes tobacco	90 09	2 kegs, 5 half kegs, and	
10 boxes soap -	22 50	5 qr. kegs powder -	35 38
2 boxes starch -	7 28		785 01
	720 17		720 17
			$1,505 18

And also praying that the aforesaid goods be taken possession of and delivered to the said E. P. Calkin & Co.; and the said writ having been directed to be issued by the judge of the first judicial district: These are, therefore, to command you to enjoin and restrain the said James H. Cocke from proceeding to make sale of the goods, wares, and merchandise above specified; you will also take possession of the said goods, wares and merchandise, and deliver the same to E. P. Calkin & Co. You will also summon the said James H. Cocke to appear at the next term of the district court, to be holden in and for said county, to answer the matters and things set forth in said petition, of which you will serve said Cocke with the accompanying copy. Herein fail not, and due return make of this writ, certifying how you have executed the same.

Witness E. G. Phipps, clerk of said court, with a scrawl for a seal, (there being no seal of court furnished,) this tenth day of June, A. D. 1846.

E. G. PHIPPS, *Clerk*, [SEAL.]
By J. W. MOORE, *Deputy.*

Return.

Received June 10th, 1846. Executed same day by serving defendant in person with a copy of the petition, and a true copy of this writ,

by taking possession of the within described goods, wares, &c., with the exception of 50 sacks of corn, and delivering the same to E. P. Calkin & Co., as per their receipt hereon endorsed.

N. S. HILL, *coroner, G. C.*

Received, Galveston, June 10th, 1846, of N. S. Hill, coroner of Galveston county, all the within described goods, wares, and merchandise, except fifty sacks of corn.

E. P. CALKIN & CO.

Fall term, 1846, November 15, 1846.

Default, and leave to plaintiff to amend.

In district court, fall term, 1846.

STATE OF TEXAS,
County of Galveston.

EDWARD P. CALKIN, and al.
vs.
JAMES H. COCKE. } No. 153.

Answer.

The answer of James H. Cocke to the petition of the plaintiffs, or to so much thereof as he is bound to answer, reserving all exceptions to the same, and to the errors therein, alleges, that on the day of the supposed unlawful taking complained of in said petition, he was the lawful collector of customs for the port of Galveston, to which office of collector he had been long before that time appointed by the Executive of the late Republic of Texas, and the functions and duties thereof he had thereafter continued to discharge and exercise up to the 16th day of February, 1846, under and according to the provisions and requirements of the several laws in that behalf provided, and before that time subsisting. This respondent admits that the plaintiffs did, on the 30th day of January, 1846, introduce certain goods into the port of Galveston from the city of New Orleans, and believes that the description of said goods contained in the petition, and the annexed exhibits, forming part of it, are mainly correct, excepting in relation to the estimates or allegations concerning the value of said goods, the correctness whereof he denies. These goods, he alleges, were, at the time of their said introduction, subject to the payment of certain duties by the laws then in force, which duties this respondent was bound to collect for the use of the government of Texas; that the plaintiffs then and there refused to pay such lawful duties, or to enter the said goods, and wrongfully insisted that they had a right to land the said goods free of duty or revenue charge. Whereupon, to secure the payment of said duties, this respondent, as in duty bound, and as by law required, took the said goods into his custody and possession, acting in his aforesaid capacity. He admits that he subsequently restored to the plaintiffs a

large portion of said goods, which they received and disposed of, reserving and retaining in his possession only enough, in the exercise of his judgment, to secure the amount then due for duties as aforesaid; also, that the schedule purporting to exhibit the amount and items of the goods so retained, as set forth in the plaintiffs' letter to him, under date of the 10th March, 1846, (as appears by a supposed copy thereof, forming a part of said petition,) excepting, in relation to prices, estimating and alleged values, may be correct; also that the amount of duties to which the whole of the goods so imported as aforesaid were subject, and as such claimed, was one thousand dollars, or thereabouts. This respondent further admits, that the portion so restored was delivered to the plaintiffs on the 26th of February, 1846, as is stated in the letter last above referred to; and he alleges that the plaintiffs never having entered their said goods for reshipment or re-exportation, had no right, at that time, to remand them for reshipment, nor to claim any benefit of debenture; also, that subsequently thereto, and in the letter last referred to, dated the 10th of March as aforesaid, two weeks after receiving from this respondent the larger portion of their said goods, they did claim, or pretend to claim, as one alternative, that the remainder (being the portion retained to secure payment of the duties,) should be given up to them for reshipment, which claim or request was, as this respondent charges, manifestly unjust. And in relation to so much of said petition as alleges that the plaintiffs, on the 26th of February, 1846, and before their receiving the larger portion of their goods as aforesaid, applied to this respondent for a permit to reship the said goods, are incompatible with another part of petition; and in relation to any other like allegation in the said petition this respondent admits that such a demand may have been made after his taking possession of said goods, and before the plaintiffs received the portion delivered to them as aforesaid, which demand he was compelled by law to refuse to comply with, and did so refuse, because the plaintiffs had never entered their said goods, but refused so to do; by reason whereof they had no right to demand the same for reshipment, nor had this respondent the right or authority to comply with such demand. And as to any and all other matters and (things) [and] allegations necessary to be answered, and not herein sufficiently answered or traversed, admitted or denied, this respondent does not admit the truth of all or any of them, but challenges proof. And in relation to the supposed writ of injunction, sued out by the plaintiffs in this action, this respondent is advised that the same could not properly have been so sued out, inasmuch as the petition aforesaid was not sworn to. Whereupon he prays that the said writ be dismissed; that this respondent, in relation to the property seized by virtue of the same, and delivered to the plaintiffs, be adjudged to receive ample remuneration; that they be further adjudged to pay the amount of duties aforesaid; also expenses, costs, and damages, the sum of fifteen hundred dollars, and he may have other proper relief.

By HARRIS & HOUSTON & ALLEN,
His attorneys.

Plea.

And for plea in this behalf this respondent alleges that the plaintiffs, on the 13th day of June, A. D. 1846, in their action aforesaid, illegally and unjustly sued out a certain writ purporting to be an injunction, whereby, and according to the precept whereof, they caused to be seized from the legal possession of this respondent, and placed in their own possession, the goods, wares, and merchandise mentioned in said writ, of the value of 1,500 dollars, as is by them alleged in their said petition; which writ being filed of record in this cause, together with the writings endorsed thereon, are referred to as part of this plea; that the said writ was not only illegally and unjustly sued out, but all proceedings under the same against this respondent have been oppressive and illegal; and by reason of the premises, this respondent, in his aforesaid capacity, has sustained damages to the amount of two thousand dollars, which he is entitled to claim against the plaintiffs in this cause in reconvention, and for which he prays judgment.

By HARRIS & HOUSTON & ALLEN,
His att'ys.

Filed Nov. 17, 1846.

Intervention.

E. P. CALKIN & Co.
vs.
JAMES H. COCKE.

And now comes George W. Brown, district attorney of the United States of America, for the district of the State of Texas, and claims that all the duties due upon the goods, wares, and merchandise mentioned in the petition, answer, and plea in the above case, if any be due in this behalf, belong to, and are due and owing to, the United States of America by virtue of the 1st article and 10th section of the Constitution of said United States, and not to the Republic of Texas, as is claimed in said answer and plea; and thereupon the district attorney files this claim of intervention for and on behalf of the said United States, and prays that if any sum should be decreed by this honorable court as duties on said goods, wares, and merchandise, that the same shall be subject to the order of the proper officer for the use and benefit of the said United States.

GEO. W. BROWN,
U. S. district attorney.

Filed Dec. 17, 1846.

Judgment.

Fall term, 1846. January 5th, 1847.

This cause this day came on for hearing on the petition, answer, statement of facts, and exhibits filed; and the court, being now sufficiently advised in the premises, is of opinion that Texas, on the 29th

day of December, 1845, was admitted, and on that day did become one of the States of the United States of North America, and as a consequence was entitled to all the rights and privileges belonging to any member of the Union, and from that time was subject to the provisions of the Constitution of the United States, and its laws in the collection of duties on imports; and the merchandise, upon which the defendant claimed duties under the provisions of the laws of Texas, having been imported from one of the States of the Union, subsequent to the admission of Texas as one of the States, the court is of opinion that the collection of duties on goods, imported from another State after the admission of Texas, is in direct conflict with the provisions of the Constitution of the United States, and therefore decrees and orders that the injunction, heretofore granted the plaintiffs, be made perpetual against the defendant for the sum of one thousand dollars, the sum admitted to be the amount of duties claimed; and that the defendant and all other persons be perpetually enjoined and restrained from the collection of the same. The damages claimed by the plaintiffs being uncertain, the court directs that a jury be empannelled to assess and ascertain the same, and the jury having been empannelled, and returned into court the following verdict: We of the jury assess and find that the plaintiffs recover of the defendant the sum of two hundred and fifty dollars as damages for the unlawful detention of the merchandise in the petition mentioned. It is therefore considered by the court, that the plaintiffs recover of the defendant the aforesaid sum of two hundred and fifty dollars, the damages assessed by the jury, and the costs in this suit expended.

Bill of exceptions.

Galveston county, district court.

CALKIN & CO.
vs.
JAMES H. COCKE.

Be it remembered, that, on the trial of this cause, the plaintiffs offered to prove by John H. Bennett that, on the twenty-fifth of February, 1846, plaintiffs demanded of the said James H. Cocke, the defendant, the goods mentioned in the petition to re-ship, and offered to execute a debenture bond under the revenue laws of the Republic of Texas; which testimony the presiding judge excluded, unless it was first shown that the said goods had been entered under the revenue laws of the Republic of Texas, to which the said plaintiffs then and there by their counsel excepted.

In testimony whereof I, James Love, presiding judge of said court, have hereunto set my hand and seal, this twenty-ninth day of December, A. D. 1846.

JAMES LOVE,
Judge, 1st ju. dist.

Filed Dec. 29, 1846.

District court, Galveston county, 29th December, 1846.

CALKIN et al.
vs.
COCKE.
No. 153.

Facts.—The defendant, James H. Cocke, was collector of the port of Galveston, under the Republic of Texas, and continued such collector while the revenue laws thereof remained in force. The amount of duties is one thousand dollars, which are rightfully charged, if duties were legally collectable under the revenue laws of the said republic on the 30th of January, 1846. The statements in relation to the amount and description of the goods in the petition are correct, as also the place from whence the same were imported, and the manner and time of importation. The papers purporting to be copies of letters attached to the petition, and forming parts of it, are true copies of the originals furnished the defendant, as stated in the petition. The original value of the goods imported was four thousand five hundred dollars. The value of those retained by the collector, and not delivered to the plaintiffs, was fifteen hundred dollars. Fifty sacks of corn, of the invoice value of 79.42, were sold by the defendant to pay said duties without the plaintiffs' consent, but in manner prescribed by the laws of the said republic for such sales by collectors. The goods were never entered, the plaintiffs claiming the right of introducing and landing them free of duties, as fixed by the revenue laws of the Republic of Texas. The corn aforesaid was sold by defendant, as perishable property, for eighty-four dollars; and corn was worth, at the said time of importation aforesaid, ninety cents per bushel, and there were one hundred and eighty-four bushels. The defendant was instructed by the secretary of the treasury of the late Republic of Texas to continue to collect duties under the revenue laws of the same up to the 16th day of February, 1846, being the first day of the meeting of the legislature of the State of Texas.

We, the jury, find the above statement to contain all the facts proved on the trial of the cause No. 153, E. P. Calkin & Co. vs. James N. Cocke, irrespective of any admission contained in the petition and answer. And if [he], upon those facts and admissions, by the consideration of the court, be in law liable for damages, then we assess such damages against him at the sum of dollars; but if, on the other hand, the defendant should not, by the consideration of the court, be held in law so liable, then we find in favor of the said defendant, and that he recover against the plaintiffs the sum of nine hundred and sixteen dollars, being the balance of the amount of duties remaining unpaid; and also the further sum of dollars, to which the said defendant is entitled, in (remuneration) reconvention. Dec. 29, 1846.

———— ————, *Foreman.*

Filed December 29, 1846.

I certify the within is the statement of facts filed in this cause previous to the submission of the papers to the court, and is the same alluded to as filed in the opinion of the court.

JAMES LOVE,
Judge 1st ju. dist.

January 24, 1847.

Survey.

We, the undersigned, merchants of Galveston, having been called on by Messrs. E. P. Calkin & Co. to hold a survey on the following invoices of goods and merchandise, viz:

Knight, Bro. & Co., amt'g	$1,012 77,	consisting of	groceries and sundries.
T. H. Buchmaster,	900 52,	"	winter and spring dry goods.
" "	454 38,	"	" " "
D. N. Pope & Co.,	1,033 29,	"	" " "
Fred. Camerden,	252 74,	"	groceries and sundries.
F. M. Wild & Co.,	199 28,	"	groceries.
D. N. Pope & Co.,	125 00,	"	blankets.
Rich. Hogan & Co.,	197 98,	"	coffee.
D. N. Pope & Co.,	97 91,	"	winter goods.
T. H. Buchmaster,	75 09,	"	clothing.
E. F. T. Prescott,	120 05,	"	wines.
H. Davis,	79 42,	"	corn.

Amounting to about $4,600, and introduced into the State of Texas on the 30th day of January, 1846; do certify, that in our opinion the detention of said merchandise by the collector of duties of the Republic of Texas, at Galveston, from the owners, Messrs. E. P. Calkin & Co., results in a loss and damages to them, in consequence of the said delay, and the goods and merchandise becoming therefrom unseasonable and unsaleable, to the amount of twenty-five to thirty per cent. at least of the invoice value, as above stated, and could not be sold without greater loss; whereas, but for such detention, illegally made by such collector, their profits on the sale of such merchandise would no doubt *would* have been equal to at least an increase of twenty per cent. on the value as above stated. We further certify, that we have examined the original invoices, and the merchandise belonging to them, and the value is correctly stated herein; and that the nett loss to Messrs. E. P. Calkin & Co., in consequence of such detention, will amount to at least eleven hundred dollars.

In witness whereof we have hereunto set our signatures, this 28th day of February, 1846.

MATTHEW HOPKINS,
JOHN H. BENNETT.

Petition in error.

To J. H. Moore, esq., clerk of the district court for the county of Galveston.

Whereas at the last term of the district court aforesaid, holden before the honorable James Love, judge thereof, at the city of Galveston, within and for the county of Galveston, on the fifth day of January, 1847, in the case of Edward P. Calkin et al. vs. James H. Cocke, in the rendition of the judgment of the court, as well as the record, process, and proceedings therein, and in the trial thereof, manifest error hath occurred to the great injury and damage of your petitioner, the said James H. Cocke, all which appears of record; and whereas he is entitled by law to have a writ of error in this cause issued by yourself, to the end that the same may be revised, and the error, therein corrected, in this behalf, in and by the honorable supreme court of the State of Texas, now holden and in session at the time of the trial of said cause; whereupon he prays that you forthwith issue a writ of error in due form of law in the cause aforesaid, and therein and thereby that you cause to be cited the said Edward P. Calkin and Samuel Jones, they being the original plaintiffs of record in said cause, to be and appear before the supreme court for the State of Texas, now holden at the city of Austin, within and for the State aforesaid, to answer unto your petitioner as plaintiff in error in the premises, and to show cause, if any they can, why the errors alleged and to be assigned in the case should not be revised and corrected, and the judgment aforesaid therefor revised; and that, upon the return of said writ, you immediately send up to the supreme court aforesaid a full, true, and perfect transcript of the record, process, proceedings, and judgment and verdict in said cause, so that the same may be heard and determined at the present term of the supreme court agreeably to law.

By EBEN. ALLEN,
Attorney for said James H. Cocke.

Filed January 25th, 1847.

Writ.

THE STATE OF TEXAS,
County of Galveston.

In the district court, to the sheriff of said county, greeting.

Whereas James H. Cocke has filed in the clerk's office of the district court of said county his petition, praying that a writ of error issue in a certain cause, wherein Edward P. Calkin and Samuel Jones are plaintiffs, and said Cocke is defendant, and wherein a judgment was rendered at the last term of the said court against said Cocke; and the said James H. Cocke having alleged in his said petition that, in the rendition of the judgment of the court, as well as in the record process and proceedings therein, and on the trial thereof, manifest error

hath occurred, to the great injury and damage of him, said Cocke; these are, therefore, to command you to cite the said Edward P. Calkin and Samuel Jones to be and appear before the supreme court for the State of Texas, now holden at the city of Austin, within and for the State aforesaid, to answer unto the said James H. Cocke, as plaintiff in error in the premises, and to show cause (if any they can) why the errors alleged and to be assigned in this case should not be revised and corrected, and the judgment aforesaid therefor reversed; herein fail not, and due return make of this writ in thirty days from the date hereof, to the clerk's office of the said district court.

Witness James W. Moore, clerk of said court, with a scrawl for seal, there being no seal of court furnished, this twenty-sixth [SEAL.] day of January, A. D. 1847, and of the independence of the United States of America the seventy-first year.

J. W. MOORE, *Cl'k, D. C., G. C.*

Return.

Received the within writ January 26, 1847, and executed same day, by serving a copy thereof, and of the petition of the plaintiff in error, upon Samuel Jones in person, one of the defendants in error; and the other defendant, viz., Edward P. Calkin, being absent from the State, I have served the same upon Jonas Butler, his attorney of record in said cause, by delivering to him a like copy of this writ and the said petition.

P. BRYAN, *Sheriff, G. C.*

Bond.

THE STATE OF TEXAS,
Galveston county.

Know all men by these presents, that we, James H. Cocke, Oscar Farish, and Henry B. Martin, are held and firmly bound unto Edward P. Calkin and Samuel Jones in the sum of twenty-five hundred dollars; for which payment, well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with scrawls for our seals, and dated this twenty-ninth day of January, A. D. 1847. The condition of the above obligation is such, that whereas, at the last term of the district court, holden in and for said county of Galveston, to wit, on the 5th day of January, 1847, in a certain suit wherein said Calkin and Jones, by the name of E. P. Calkin & Co., are plaintiffs, and said Cocke defendant, the injunction in said case was perpetuated against said Cocke for the sum of one thousand dollars, and a judgment rendered against said Cocke for the sum of two hundred and fifty dollars damages; and whereas the said James H. Cocke, on the 26th day of January, 1847, sued out a writ of error, returnable to the supreme court of the State of Texas, now holden at the city of Austin,

in and for said State; now, therefore, if the said James H. Cocke shall comply with the judgment, order, or decree of the said supreme court upon said writ of error, and shall well and truly pay all such damages as shall be awarded against him therein, then this obligation to be null and void; otherwise to remain in full force and effect.

JAS. H. COCKE, [SEAL.]
OSCAR FARISH, [SEAL.]
H. B. MARTIN. [SEAL.]

Signed, sealed, and delivered, in presence of—
J. W. MOORE.

Filed and approved January 29, 1847.

THE STATE OF TEXAS,
County of Galveston.

I, James W. Moore, clerk of the district court of said county of Galveston, certify, that the foregoing is a true copy of all the proceedings had in said cause, E. P. Calkin & Co. vs. James H. Cocke.

Given under my hand and scrawl for a seal, (no seal of court being furnished,) this fourth day February, A. D. 1847.

J. W. MOORE, *Clerk, D. C., G. C.*

Bill of costs.

Copy of petition, &c., 4 50; writ, 50; bond, 50; docketing, 15	5 65
Appearance, 10; venire, 10; filing papers, 1 20; default, 50; order, 25	2 15
Subpœna, 75; swearing witnesses, 20; swearing jury, 10; entering verdict, 25	1 30
Judgment, 50; tax, 9; costs, 25; record., 9; copy., 9	18 75
County tax, 3; certificate, 50	3 50
	31 35
Coroner executing writ, 50; levy., &c.	3 00
Sheriff summoning 6 witnesses, 3 00; venire, &c., 30	3 30
Writ of error, clerk, 5 70; sheriff, 2	7 70
	$45 35

Attest: J. W. MOORE,
Clerk, D. C., G. C.

Filed February 17, 1847.

GREEN, *Clerk, sup. court.*

Opinion.

JAMES H. COCKE, plaintiff in error,
vs.
E. P. CALKIN & Co., defendants in error. } No. 509.

446.

Error from Galveston.

The principal question, and the only one discussed, is, as to the time when the right of Texas to collect import duties under the revenue laws of the republic ceased to exist. The importations by the defendants in error were made on the 30th January, 1846, and it is contended by the plaintiff in this court that all goods introduced before the 16th February, 1846, the day of the organization of the State government, were chargeable with duties in accordance with the laws of the republic, regulating duties on imports, and by the defendants in error that these laws became null and inoperative on the 29th day of December, 1845, on which day, by joint resolution of the Congress of the United States, Texas was admitted as one of the States of the Union. The judgment of the district court was founded on the opinion that Texas being admitted on the 29th December, 1845, and becoming on that day one of the States of the United States of North America, was in consequence entitled to all the rights and privileges belonging to any member of the Union, and from that time was subject to the provisions of the Constitution of the United States and its laws, in the collection of duties on imports; and that the merchandise upon which duties are claimed, having been imported from one of the States of the Union subsequent to the admission of Texas, was not liable to these charges, and that the collection of the same would be in direct conflict with the Constitution of the United States. The Executive of the Union was, by joint resolution, approved March 1, 1845, authorized to submit one of two alternative propositions to the Republic of Texas, as an overture on the part of that Government for her admission as a State of the confederacy. One of these contemplated the completion of this great measure, and the adjustment of its terms by legislation, and the other by negotiations of the parties to the compact. The President, in his discretion, selected and presented for consideration and acceptance, by this republic, the proposals contained in the first and second second sections of the said resolutions, by which, (among other matters not pertinent to the present question,) it was declared that Congress assented to the erection of the Republic of Texas into a new State, with a republican form of government, to be adopted by the people of said republic by deputies in convention assembled, with the consent of the existing government of the said republic.

This consent, on the part of the United States, was given upon several conditions, one of which required the constitution, which was to be framed by the convention, to be transmitted, with the proper evidences of its adoption by the people of the said Republic of Texas, to the President of the United States, to be laid before the Congress of the Union for its final action, on or before the first day of January, one thousand eight hundred and forty-six. The existing government of Texas and the convention assented to this overture with its conditions and guarantees, and this consent on the part of the convention was attached to and incorporated with the constitution. By the first section

of the twelfth article of the said constitution, it was declared that "all process which shall be issued in the name of the Republic of Texas, prior to the organization of the State government under this constitution, shall be as valid as if issued in the name of the State of Texas." In the second section of the same article it was provided, that "all criminal prosecutions or penal actions which shall have arisen prior to the organization of the State government under this constitution, in any of the courts of the Republic of Texas, shall be prosecuted to judgment and execution in the name of the State, &c." The sixth section contained a provision that if it should appear on the second Monday of November, 1845, from the returns that a majority of the votes polled of the people of Texas were given for the adoption of the constitution, the president should make proclamation of that fact, and thenceforth the constitution was ordained and established as the constitution of the State, to go into operation, and be of force and effect, from and after the organization of the State government under the said constitution. By section 10 it was declared "that the laws of this republic relative to the duties of officers, both civil and military, of the same, shall remain in full force, and the duties of their several offices shall be performed in conformity with the existing laws, until the organization of the government of the State under this constitution, or until the first day of the meeting of the legislature, &c."

By their various provisions the sovereign will of the people of this republic was declared in accumulated and most perspicuous terms, that its government and laws should continue in force until the first day of the meeting of the legislature under the new constitution, and consequently excluding, until that period, all repugnant laws or jurisdictions, and every portion of the new constitution itself, of which a previous enforcement was not enjoined. Was such a provision within the scope of her powers, as one of the high contracting parties; and was it or not inconsistent with the character and qualities of the compact and the respective rights and allegations of the equally sovereign parties to this confederation?

At the formation of this constitution Texas possessed all the plenary (powers) attributes of sovereignty, and held an acknowledged rank among nations as an independent republic; she possessed like powers with the United States, to present terms and conditions on which she would consent to her incorporation as a State into the Federal Union, and the extension over her territory of the laws and Government of the United States. This is a self-evident proposition, and cannot be made more plain by argument or illustration. She possessed then, and rightfully, the undoubted powers to propose that her former government and laws should continue in full force until a designated period, and that proceedings should not, until that time, commence under the new governments between which the powers of her old government had been distributed. This stipulation being assented to by the other party would, on the principles of the international code and universal right, be of binding (force) and mutual obligation on the parties. Let us

pose that the Government of the United States had, in express terms, proposed that the laws of this Republic should continue in full force until the organization of the State government, as a convenient period at which the new government would be prepared to assume the exercise of the respective powers vested within their several jurisdictions, and that this proposal had been accepted by the Republic of Texas, could its obligatory force under such circumstances be at all problematical? If its obligation, when presented by the United States, would be indisputable, it must possess the like validity and authority when offered by Texas, and approved of by the Federal Government. Nor is the continuing operation of the former laws up to the organization of the State government incompatible with the nature (of) or qualities of the compact, or the respective rights and obligations to the same. It must be conceded that the parties to a treaty, a league, a confederation, or constitutional compact, may mutually agree that the treaty or constitution shall, by certain acts, be fully established between the parties at a certain time, but that it shall not, until a more distant period, go into force and operative effect. Even ordinary acts of legislation are frequently, by express provision, without force or authority, until the lapse of some time subsequent to their adoption; and the history of constitutions will show that they are generally established, and finally acted upon, some time previous to the commencement of their operation. But the early history of the Constitution of the United States furnishes conclusive proof of the correctness of the proposition, that a constitution may be established, and yet remain for months without force or (authority) activity; and that a union between confederative parties may be completed, and the instrument of confederation be fully ratified and finally acted upon, and yet the form of government and laws of the contracting parties may continue in operation for a long period subsequent to the complete and perfect sanction of the new compact or form of government. The seventh article of the Constitution of the United States contains the declaration that the ratifications of the conventions of nine States should be sufficient for the establishment of the Constitution between the States so ratifying the same. This Constitution, after having been ratified by eight other States, was, on the 21st of June, 1788, assented to by New Hampshire, being the ninth State, and was then, by its own terms, established between the States which had concurred in its ratification. These States had taken final action on the form of government submitted to them, and this had resulted in the establishment of a constitution replete with great and mighty changes in the respective powers of the General and State governmsnts, and in the very character itself of the Federal Government. On the ratification of the ninth State a new Union had been formed. Instantaneously on the completion of this act of ratification, the assenting States became members of this new confederacy. But it entered into the imaginations of none, that by the mere establishment of the Constitution, the mere mutual incorporation of the States in a new Union, the

old confederacy was at once abrogated, the government under it extinguished, or that the constitutions or laws of the assenting States were modified, or their governments stripped of a single power which they had possessed or exercised. That this would be the operation of the establishment of the Constitution of the United States was clearly not imagined by the convention that framed that instrument, as their resolves show that they entertained an opposite opinion. The organic basis had been established, but further measures were deemed necessary to infuse active power and energy into this new political creation; and, accordingly, the Congress of the old government proceeded to take such measures, and, after a long debate, passed an act for that purpose, which, among other things, provided that on the 1st of March, 1789, proceedings should commence under the new constitution. Thus a period of more than eight months intervened between the establishment of the new Constitution and Union and the organization of any government under the same, or the actual force and effect of any of the grants, powers, or provisions of the said Constitution. The former government of the confederacy continued in vigor, or at least in potential existence, during the whole interval. The States collected their impost duties, and could at pleasure, in their legislation, disregard the prohibitions of the new Constitution. That these were not respected in the interval between the establishment and the operation of the Constitution, is a fact founded upon the history of the times; and that they were of no binding obligation has been judicially determined by the Supreme Court of the United States. The question before that tribunal was, whether an act of the legislature of Virginia, passed in 1788, was within the operation of that provision of the Constitution of the United States prohibiting States from passing laws impairing the obligations of contracts. It was determined, in substance, that both governments could not be understood to exist at the same time. That the new government did not begin until the old government expired; that it did not commence on the ratification of the ninth State, nor until the first Wednesday of March, 1798; and that, therefore, the provisions that a State shall pass no law impairing the obligation of contracts does not extend to a State law enacted before that day, and operating upon the rights of property vested before that time. See Owens vs. Speed et al., 5 Wheaton's Rep., 420; 4 Cond. Rep. 714. It is thus very manifest that a constitution may be established, a union of two or more sovereignties be fully completed, without any immediate change of the laws or government of the country. But it is urged that by the assent of Texas to the overture for annexation, she agreed that at the moment of the acceptance of her constitution by the Congress of the United States, all of her laws repugnant to those of the Union should cease, and those of the United States should at the same instant be in full force throughout the territorial limits. It should be remembered that this assent, whatever may be its extent or obligation, was incorporated with the constitution, and must by all legitimate rules of construction be expounded in connexion with other provisions of

that instrument, or at least with those having the nature and effect of a stipulation between the parties. But admitting that it may be considered separately, what is the full extent and operation of this assent on the part of the people of Texas? She consented to be organized into a new State, with a republican form of government, to be adopted by the people of the said republic; and that this constitution which she consented to frame should be laid before Congress for the final action on or before the first day of January, 1846. Is this an agreement that the final and favorable action of Congress on that instrument should at once introduce the jurisdiction and laws of the United States; or is it not only and simply to transmit to that body the constitution of the new State, which was to be subsequently organized on its provisions, that they might ascertain if it were republican in form, and without provisions or stipulations repugnant to the rights or powers of the General Government? And surely with the understanding, that if the Congress approved of the constitution which they had proposed should be formed by the people, and forwarded for that purpose, its provisions and stipulations would then be binding on both parties, and that neither the laws of the United States nor the constitution itself could be in force until the time stipulated for and ordained in that instrument had arrived. The Constitution of the United States authorizes the admission of new States, and to every State a republican form of government is guaranteed; the approval of a constitution extends principally to its republican form; but the mere approval of a constitution would not of itself even admit a new State; but the acts of admission of the extension of the laws and jurisdiction of the United States over the territory of the new State, and those under which their officers for the administration of justice and the collection of revenue are appointed, and post offices and roads established, are distinct and separate exercises of power. Some of these may be embraced in the law approving the constitution, not because they form a whole composed of inseparable parts, but from the convenience of accomplishing several objects by the same law. If the approval of the constitution of Texas would not ex necessitate abrogate her old laws, and extinguish them and her government together for twenty days or a month, before the community living under those laws and that government could possibly be apprised of the fact, then the right of Texas to stipulate for and determine the time at which the change of government and laws should occur is unquestionable; and this being proposed by her, and accepted by the United States, is of paramount obligation, rendering the acts of either repugnant thereto null and inoperative. It was insisted that this stipulatory provision should have been presented by Texas in a distinct and separate resolution, and should not have been embodied in the constitution. This objection rests on no solid foundation. The negotiations between the two powers was carried on throughout by the cumbrous process of alternate progressive legislation, and not by the ordinary interchanges of diplomatic intercourse. The proposition for annexation had for the first time been made by the United States to a foreign nation, and this

proposition emanated from the legislative branch of that Government. The whole proceeding was anomalous in its character, and the question is, not whether the whole proposition, or any particular part thereof, was presented in the proper mode, but whether it received the assent of the parties; this one given obviated all objections, both of form and substance, to the proposition. But supposing the constitution to be approved, the subsequent admission of the State into the Union does not of itself extend the laws of the United States over a nation which had been previously a separate and independent sovereignty. The proposals for the mutual incorporation of the sovereignties may have been fully assented to, may have received the final action of both parties, resulting in a complete union; but it may very properly be one of the very conditions of the compact that the old government and laws should for a limited period continue in full force and effect. That the mere admission of a State does not of itself extend the laws of the Union over the territory, is exemplified in the history of such admissions. North Carolina and Rhode Island, two of the original States, not having assented to the Constitution of the United States before the new Federal Government was organized, were treated in many respects as foreign States; the assent of North Carolina was not communicated to the Government of the United States before the 11th of January, 1790. By that act she became one of the States. But special legislation was required to extend the laws of the United States over her territory. No law was passed for that purpose before the 8th of the succeeding February, and the laws regulating imports were by special provision not to be enforced in that State until thirty days after the passage of the said act. It would be tedious to detail the legislation subsequent to the admission of a State, and consequent thereon. The reference which has been made will shew that a State may be for months a member of the Union without any of the laws of the United States being in force in her territory. The admission of a State is one act, and the extension of the laws and jurisdiction of the Union is another and distinct exercise of authority. This discussion of the mere effect of the approval of a Constitution, or the admission of a State, might seem to be unnecessary, but as they were to some extent relied on by the defendants in error, we have deemed it advisable to take this cursory notice of the questions which were raised. Was there any thing unreasonable in the provision continuing the former government and laws until the organization of the State government which was directed to take place at the earliest possible period after the notification of the approval of the Constitution by the Congress of the United States? The condition of Texas was in many respects in contrast with that of a territory about to be organized into a new State, and admitted into the Union. A territory is but a corporation of the Government of the United States, founded on the laws and supported out of the treasury of the Union. These laws are in full force and active operation within the limits of the territory during the whole period of its transmutation and elevation to the rank and dignity of a sovereign member of the

Confederacy; and on her admission as a State she is invested with powers of sovereignty not inherent in her primary inferior corporate condition; but in the annexation of an independent nation several of the mightiest powers of sovereignty are relinquished by the nation and granted to the General Government; but these powers cannot be enforced by the Federal Government without special legislation for that purpose, nor can this legislation operate immediately in a distant portion of the republic. All the powers of both the General and State Governments should be simultaneously exercised in the same territory, in order to preserve the tranquility, secure the foreign and domestic relations of the community, and to enforce the enjoyments of all the rights—civil, social, domestic, and political—which are the primary objects of the establishment of a government, and are duties of a paramount obligation. All these high sovereign powers were vested in the government of the Republic, and that portion of them ceded to the Federal Government must, during the preparatory measures of that government to assume their exercise, be enforced by the government of Texas, or they must be in abeyance. The post office establishment would cease; there would be a portion of the Union in which no tariff could be collected; all the rights and powers of the General Government, if incapable of enforcement except by itself, would, as it were, be extinguished. The protection afforded the citizens from the exercise of these powers would not be extended, and the violation of them could be perpetrated with impunity. Under such circumstances, this security can be afforded and these crimes punished only by the former government continuing in full exercise of all its original powers into some designated period when the new co-ordinate government shall be prepared to assume their functions and enforce the powers incident to their respective jurisdictions. What is more reasonable, then, than the establishment of a definite period for the extinction of the old government, and the operation of the new conjoint authorities? The object of the convention in appointing the day of the organization of the State government as the period for the cessation of the old and the inceptive force of the new authorities, was to prevent confusion, and this would have been completely attained had this provision of the constitution not at first escaped the attention of the Congress of the United States. That the act of the Congress of the United States, of the 29th December, 1845, extending the laws of the Union over the territory of Texas, if intended as appears from its terms to operate immediately, was adopted through inadvertence, is manifest from the provisions of the act by which certain post routes were established in Texas, approved May 29, 1846. By the third section of that act, the Postmaster General was authorized to pay mail contractors in Texas for services duly performed by them since the sixteenth day of February, eighteen hundred and forty-six. And also that the several postmasters appointed by the late government of Texas should pay to the Postmaster General all balances accruing at their offices from and after the said 16th February, 1846; and all laws concerning the Post Office

Department, and the regulations thereof, were declared to have full effect and operation in said State from and after the said 16th February aforesaid. These provisions of this posterior statute afford unequivocal proof of the deliberative recognition by Congress of the binding (recognition) obligation of the declaration in the constitution, that the former laws should continue in force until the organization of the State government, and consequently excluding the laws of the United States regulating the post office, and all other subjects, until the 16th February, 1846; any other supposition than that the law of the 29th December, 1845, was passed through inadvertence, would impute to that Government an attempt to seize upon the revenues of the republic arising from imports, while for fifty days afterwards she threw upon the treasury of Texas, thus crippled, the burthen of the mail transportation and service generally. Any construction which would result in an imputation so slanderous cannot be legitimate, and must be rejected, when the acts of the party are susceptible of a different and more rational and just explanation. But whatever may be the grounds on which the law of the 29th December, 1845, extending the laws of the United States over Texas, may be explained or defended, or whatever may be the proper construction of the act, we are of opinion that neither the Constitution nor laws of the United States were in force within the limits of Texas until the day of the organization of the government of the State, viz., the 16th February, 1846. The convention, and the people of Texas in their highest sovereign capacity, separate and distinct from all other nations or States, and uncontrolled by any earthly power, declared, in the most solemn form in which expression could be given to their will, that the former laws of the republic should continue in full force until that day, and this by necessity excluding all other laws repugnant thereto up to that period. This declaration was approved without hesitation on the part of the United States; was not incompatible with any of the rights or powers of that government, or the nature of the union formed between the two countries; and carries with it an obligation of as much force as any provision of the Constitution or treaties of the United States. To place this question in a different point of view, let us suppose that the Government of the United States, instead of insisting upon the framing of a new constitution, had been satisfied with the old one as an excellent mode of a republican form of government, and had required only the assent of the Republic of Texas to the Constitution of the United States, could not this republic have rightfully embodied in its act of assent a provision that the Constitution and laws of the United States should not operate in her limits until a specified period. The Constitution of the United States, as we have before seen, was not in force until some time after the assent of the associating States had been given, and their union had been completed. Whether this would have been the proper process for the annexation of Texas, she being an independent nation, it is not our purpose to discuss. It is clear that the consummation of the union between the two people did not indispensably require the forma

tion of a new constitution by the Republic of Texas. This is as obvious on principle as on the analogous facts characterizing the adoption of the Constitution of the United States. By that Constitution the powers of the General Government were greatly enlarged, and its very character changed from one acting on organized communities, to one operating directly on individuals. The change was so great as to have produced an almost complete transformation, yet the constitution of none of the original confederates were modified in adaptation to this great mutation in their political rights, powers, and obligations; even Rhode Island, not annexed to the Union for more than fifteen months after the organization of the Government, did not, nor was she required, to remodel her royal character by which for more than forty subsequent years she continued to be governed. The assent to the Constitution of the United States swept away all repugnant provisions of the constitution of the States. A new constitution was not then an indispensable preliminary to an admission as a State. But when framed in accordance with the (provisions) proposal made and accepted by the Government of the United States, its provisions are of binding obligation on the parties. There is nothing extraordinary or unusual under the like circumstances in Texas collecting impost duties subsequent to the approval of her constitution, and if their were, it was under a special provision for that purpose. After the establishment of the Constitution of the United States, the several States did not on that ground suspend their collections of imposts, even after the organization of the Federal Government on the 4th March, 1789; they still continued their collections, until the last day of the succeeding July, on which day the first tariff law of the United States was adopted, nay, even after this period, through the months of August and in September, the State tariffs were occasionally enforced. No question relative to the duties paid under the State establishments before the first of August appears to have arisen, and whether the claim made by the Government of the United States for those collected subsequent to that date was persisted in, does not appear from any documents accessible to the court. See American State papers, finance, vol. 1, p. 45, No. 11.

The amount involved in this suit is small, but the principles are of the highest magnitude and enduring importance. The extreme pressure of numerous important causes prevents a more detailed examination of the subject, and any attempt to present the reasons we have given in a more elaborate shape or a form more condensed. We are of opinion that the laws of the Republic of Texas regulating imposts continued in force until the 16th February, 1846, and that all importations previous to that period were chargeable with duties in accordance with those laws. The other ground has been abandoned or not insisted upon. It is therefore ordered, adjudged, and decreed, that the judgment of the district court be reversed, and the court here proceeding to render such judgment as should have been entered up below: It is ordered, adjudged, and decreed, that the plaintiff in error, James H. Cocke, do recover of the defendants in error, the sum of nine hundred